

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:06-CR-337 (CEJ)
)	
GARY S. KAPLAN,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

Pursuant to 28 U.S.C. § 636(b), the Court referred all pretrial matters in this case to United States Magistrate Judge Mary Ann L. Medler for determination and recommended disposition, where appropriate. On October 29, 2008, Judge Medler issued a Report and Recommendation in which she recommended that the motion for severance filed by defendant Gary S. Kaplan be denied. The defendant filed timely objections on November 10, 2008. The Court is required to review *de novo* the proposed findings and recommendations of the magistrate judge as to objection has been made. 28 U.S.C. §636(b)(1).

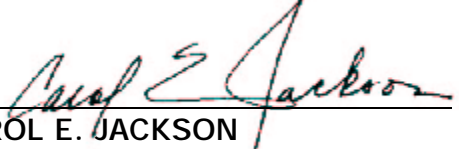
In his objections, Gary Kaplan reiterates the arguments he made in support of his motion to sever counts or, alternatively, to sever defendants. These arguments were fully addressed by the magistrate judge. It is evident that Gary Kaplan disagrees with Judge Medler's recommendation. However, he does not point to any error in her factual findings or legal conclusions with respect to the propriety of joinder of the defendants and counts under Fed. R. Crim. P. 8(b) and 14(a). Moreover, the Court finds that Gary Kaplan will not suffer the kind of

prejudice warranting severance by reason of any delay in the proceedings or his continued detention.¹ Indeed, a severance of the counts in the manner suggested by Gary Kaplan would require two trials at which most of the same evidence would be presented against him. Further, the reasons for Gary Kaplan's detention remain unchanged and would not be altered by a severance of counts or of defendants. The impact that detention has had on Gary Kaplan's business and on communications with his family does not constitute a ground for severance.

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that the Report and Recommendation of United States Magistrate Judge Mary Ann L. Medler with respect to the motion for severance filed by defendant Gary S. Kaplan is sustained, adopted, and incorporated herein.

IT IS FURTHER ORDERED that the motion of defendant Gary S. Kaplan to sever counts or, in the alternative, to sever co-defendants [Doc. 785] is denied.


CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 17th day of March, 2009.

¹ Gary Kaplan first moved for severance in October 2008, approximately one month after the Third Superseding Indictment was filed and approximately ten months after his motion for release from custody was denied by the United States Court of Appeals.